

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #1	CCRB Case #: 202001109	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/24/2020 11:30 PM	Location of Incident: Rochester Avenue and Park Place	Precinct: 77	18 Mo. SOL 7/24/2021	EO SOL 3/10/2022	
Date/Time CV Reported Sun, 01/26/2020 9:28 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/10/2020 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Andrew Tofalli	26431	955584	077 PCT
2. POM Joseph Ardolino	19087	958262	079 PCT
3. POM Ethan Cooley	24949	962993	079 PCT
4. POM Joseph Scaglione	07210	959205	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B. Officers	Abuse: Officers refused to provide their names to § 87(2)(b)	
C. Officers	Abuse: Officers refused to provide their shield numbers to § 87(2)(b)	
D. An officer	Abuse: An officer searched § 87(2)(b)	
E. An officer	Abuse: An officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F. Officers	Abuse: Officers failed to provide § 87(2)(b) with a business card.	
G. Officers	Abuse: Officers failed to provide § 87(2)(b) with a business card.	

### Case Summary

On January 26, 2020, § 87(2)(b) called the IAB Command Center and filed this complaint on behalf of himself, and a taxi driver, identified via investigation as § 87(2)(b).

On February 10, 2020, the complaint was received at the CCRB.

On January 24, 2020, at approximately 11:30 p.m., two unidentified officers stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants in the vicinity of Rochester Avenue and Park Place in Brooklyn (**Allegation A: Abuse of Authority, § 87(2)(g)**). Officers refused to provide their names and shield numbers to § 87(2)(b) (**Allegations B and C: Abuse of Authority, § 87(2)(g)**). An officer searched § 87(2)(b) and searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegations D and E: Abuse of Authority, § 87(2)(g)**). Officers failed to provide § 87(2)(b) with their business cards (**Allegation F: Abuse of Authority, § 87(2)(g)**).

No arrests or summonses resulted from this incident.

There is no video evidence in this case.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Officers stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (D) Abuse of Authority: An officer searched § 87(2)(b)**

**Allegation (E) Abuse of Authority: An officer searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

The following facts are undisputed. On January 24, 2020, at approximately 10:30 p.m., § 87(2)(b) called § 87(2)(b), a taxi hailing company, and requested a taxi for himself. A dark grey Lincoln town car, driven by § 87(2)(b) identified via investigation (Board Review 01 – Board Review 02), was dispatched to § 87(2)(b)'s location, which was in the vicinity of Spencer Street between Dekalb Avenue and Kosciuszko Street in Brooklyn, and headed towards § 87(2)(b)'s residence, located at § 87(2)(b) in Brooklyn. At approximately 11:30 p.m., two plainclothes officers in an unmarked vehicle, stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants in the vicinity of Rochester Avenue and Park Place in Brooklyn for having an inadequate plate lamp. The officers, upon approach, said the vehicle smelled of marijuana. One of the officers then ordered § 87(2)(b) out of the vehicle, searched him, and then searched the rear seats of the vehicle.

§ 87(2)(b) (Board Review 03) said he requested the taxi after attending a family gathering and that there was no consumption of alcohol, marijuana, or any other narcotics at the gathering. § 87(2)(b) acknowledged being familiar with the odor of marijuana, but said he did not smoke marijuana, nor did he smell or see anyone smoke marijuana at the gathering. § 87(2)(b) who was dressed in a black jacket, black hoodie, black pants, and had an army fatigue bookbag, denied having marijuana on his person, and his clothes did not smell of marijuana. § 87(2)(b) did not detect any foul or possible odor of marijuana when he entered the taxi. § 87(2)(b) said the officers informed § 87(2)(b) that he was stopped for having inadequate plate lights, but did not recall if § 87(2)(b) acknowledged that his plate lights were out. § 87(2)(b) gave the officers his driver's license, insurance card, and registration. The officers then ordered § 87(2)(b) to lower all the windows of the vehicle, and unlock the doors. § 87(2)(b) complied. One of the officers, who § 87(2)(b) described as a white man in his mid-20s or early 30s, 5'10" tall, approximately 180 pounds, and dressed in plainclothes and a bullet proof vest, opened the rear passenger's door on the passenger's side, and ordered § 87(2)(b) out of the vehicle. § 87(2)(b) complied. The officer said he was certain § 87(2)(b) had marijuana on his person, and proceeded to reach inside § 87(2)(b)'s jacket, hoodie, and pants pockets. The search yielded negative results for any marijuana or contraband. The two officers then escorted § 87(2)(b) to the rear of the vehicle, while § 87(2)(b) remained in the driver's seat. The officer who searched § 87(2)(b) returned to the rear passenger's door on the passenger's side, and appeared to enter the vehicle, but § 87(2)(b) did not see what the

officer did. The officer who remained with § 87(2)(b) at the rear of the vehicle, who § 87(2)(b) described as a white man, 6'0" tall, muscular build, and dressed in plainclothes and a bullet proof vest, ordered § 87(2)(b) to produce his ID, but § 87(2)(b) said he did not have his ID on his person. § 87(2)(b) did not recall if he provided the officer with his name. At some point, the officer who searched § 87(2)(b) returned to the rear of the vehicle, holding § 87(2)(b)'s bookbag, which was inside the vehicle. The officer opened the bookbag and reached his hands inside the bag, which contained § 87(2)(b)'s laptop, letters, and a book. § 87(2)(b) told the officers that they did not have the right to search his bookbag, but the officer said the officers could do whatever they wanted because § 87(2)(b) smelled of marijuana. The search of the bookbag yielded negative results. The officer gave the bookbag to § 87(2)(b) and ordered him to return to the vehicle, which § 87(2)(b) complied. § 87(2)(b) did not obtain the officers' names and badge numbers (see Allegations B, C and F), nor did he know the officers' commands, but said he could identify them if he saw photos of them.

§ 87(2)(b) (Board Review 04) said § 87(2)(b) was the first passenger he picked up that night, and that the odor inside his vehicle immediately changed as soon as § 87(2)(b) entered the vehicle. § 87(2)(b) said he smelled a strong and "stinky" odor of burnt marijuana as soon as § 87(2)(b) entered the vehicle, and that it appeared § 87(2)(b) had smoked marijuana before entering the vehicle. § 87(2)(b) acknowledged that he did not see § 87(2)(b) smoking when he arrived to pick up § 87(2)(b) but said he was familiar with the odor of marijuana. § 87(2)(b) said the odor of marijuana was so strong that he slightly lowered all four windows of the vehicle. § 87(2)(b) acknowledged that his license plates lights were defective at the time of the stop. He said the officer on the driver's side, who he described as a white or Hispanic man, 6'0" tall, between 110 and 170 pounds, and dressed in plainclothes, opened the driver's door, and searched the edges of the driver's side door. The same officer then proceeded to the rear passenger's side, and ordered § 87(2)(b) out of the vehicle, but § 87(2)(b) who remained in the vehicle during the entirety of this incident, did not see what transpired after § 87(2)(b) exited the vehicle. § 87(2)(b) did not recall seeing any officer enter the rear passenger's seats, nor did he see them search § 87(2)(b) or his bookbag. The officers did not issue § 87(2)(b) a summons but instructed § 87(2)(b) to fix his license plate lights. § 87(2)(b) proceeded to drop § 87(2)(b) at his destination.

The New York City police precinct map revealed that Rochester Avenue and Park Place are squarely within the confines of the 77<sup>th</sup> Precinct, and does not border any other precincts (Board Review 05). The Daily Vehicle Assignment Sheets and Tours 3 and 1 Roll Calls of the 77<sup>th</sup> Precinct for January 24, 2020 and January 25, 2020, respectively, were requested (Board Review 06 – Board Review 07), and the search for potential officers were narrowed to officers who fit the descriptions and information § 87(2)(b) and § 87(2)(b) provided, which ultimately resulted in a pool of approximately nine officers (Board Review 08). Requests for the body worn cameras for all nine officers yielded negative results (Board Review 09 – Board Review 10), and none of their entries in their activity logs related to this incident, nor did their activity logs place them in the vicinity of the incident location at the time of the incident (Board Review 11 – Board Review 14). § 87(2)(b) was also uncooperative with the investigation despite extensive contact attempts to have him participate in an MOS photo viewing of the potential pool of officers (Board Review 21).

There were no 911 records—as per EVENT summaries and Resource Recap Logs—that appeared to relate to this incident (Board Review 15 – Board Review 16). The arrest, summons, and Stop report logs for the 77<sup>th</sup> Precinct on January 24, 2020 and January 25, 2020, showed no stops, arrests, or summonses at the incident location at about the time of the incident, nor did they reveal if any other police commands were active in the confines of the precinct (Board Review 17 – Board Review 19). Requests for the Roll Calls and Movement Logs from plainclothes commands such as the Brooklyn North Narcotics Bureau, and Brooklyn North Gang Squad, and the Brooklyn North Gun Suppression Division yielded negative results for any post assignments in the confines of the 77<sup>th</sup> Precinct (Board Review 27 – Board Review 28). The Roll Call and Movement Log from the Patrol Borough Brooklyn North Anticrime Unit revealed that four white male officers were

assigned to two unmarked vehicles on the incident date, but the officers' exact assignments are not listed, nor are there any post assignments in the Roll Call and Movement log that pertained to the 77<sup>th</sup> Precinct (Board Review 29). The four officers do not have any memo book entries that place them at the Precinct of occurrence, nor do they have any entries that pertain to this incident (Board Review 31 – Board Review 32).

Requests for all warrant audit checks performed for § 87(2)(b) and the license plate number of the taxi for January 24, 2020 and January 25, 2020, all yielded negative results (Board Review 20). § 87(2)(g)

Every motor vehicle driven upon a public highway during the period from one-half hour after sunset to one-half hour before sunrise, shall display, if required to display a numbered plate on the rear, a white light which shall illuminate the numerical on such plate in a manner as to render such numerals legible for at least fifty feet from the rear. New York State Vehicle Traffic Law (VTL) 375.2 (a) (4) (Board Review 22).

The smell of marijuana is sufficient to provide officers with probable cause to search an automobile and its occupants, People v. Chestnut, 43 A.D 2d. 260 (1974) (Board Review 23).

§ 87(2)(g)

**Allegation (B): Abuse of Authority: Officers refused to provide their names to § 87(2)(b)**

**Allegation (C): Abuse of Authority: Officers refused to provide their shield numbers to**

§ 87(2)(b)

**Allegation (F): Abuse of Authority: Officers failed to provide § 87(2)(b) with a business card.**

**Allegation (G) Abuse of Authority: Officers failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) said he requested the name and shield number of the officer who searched him. The officer quickly mentioned his shield number, but § 87(2)(b) did not hear it. § 87(2)(b) did not recall if he requested that the officer provide his shield number again, but said at some point after the incident, he requested the names and shield numbers for both officers. The officers, however, ignored § 87(2)(b) and instructed him to return to the vehicle. § 87(2)(b) never obtained the officers names, nor did he receive a business card.

§ 87(2)(b) did not hear § 87(2)(b) request the officers names or shield numbers, nor did he know if the officers refused to provide their names and shield numbers to § 87(2)(b). § 87(2)(b) never requested the name or shield numbers of the two officers.

§ 87(2)(g)

## Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to six CCRB complaints and has been a named victim in 26 allegations (Board Review 24):

- ☐ § 87(2)(b)
- [REDACTED]
- ☒ [REDACTED]  
[REDACTED]
- ☒ [REDACTED]  
[REDACTED]
- ☒ [REDACTED]  
[REDACTED]  
[REDACTED]
- ☒ [REDACTED]  
[REDACTED]  
[REDACTED]
- ☒ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- ☒ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- ☒ [REDACTED]  
[REDACTED]

- This is the first CCRB complaint § 87(2)(b) has been a party (Board Review 30).

## **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of June 3, 2021, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards this to complaint (Board Review 25).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad: 1

Investigator: Enoch Sowah Inv. Sowah 11/26/2021  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_ Mgr. Joy Almeyda \_\_\_\_\_  
Signature Print Title & Name Date 11.26.21